

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

JOSE RUBIANI,

Plaintiff

v.

JAMES DONALD, et al.,

Defendants

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5:05-CV-194 (WDO)

ORDER

When this matter was presented to the Court for review of the Magistrate Judge's Report and Recommendations to dismiss this pro se prisoner's case, the Court had received no objections to the Report and Recommendations from the Plaintiff. The Court reviewed the merits of the pending motions, considered the Recommendations and adopted the Recommendations thereby granting Defendants' motion for summary judgment and dismissing Plaintiff's state law claims without prejudice. Plaintiff thereafter sent a letter to the Clerk of Court stating he never received a copy of the Report and Recommendations and requesting leave to file an out of time appeal. Because (1) Plaintiff alleges he did not have an opportunity to respond to the Report and Recommendations, (2) an order has already been entered adopting the Report and Recommendations and (3) judgment has been entered in favor of Defendants, Plaintiff's motion to file an out of time appeal is hereby granted. Plaintiff shall have an additional 10 days from the date of this order, or by no later than December 13, 2006, to file a Notice of Appeal of this Court's October 3, 2006 order. See

FED. R. APP. P. 4(a)(5) (“No extension under this Rule . . . may exceed 30 days after the prescribed time or 10 days after the date when the order granting the motion is entered, whichever is later.”).

SO ORDERED this 28th day of November, 2006.

**S/
WILBUR D. OWENS, JR.
UNITED STATES DISTRICT JUDGE**